

E-Filed on 03/11/08

**DIAMOND MCCARTHY LLP**

909 Fannin, Suite 1500  
Houston, Texas 77010  
Telephone (713) 333-5100  
Facsimile (713) 333-5199

Allan B. Diamond, TX State Bar No. 05801800  
Email: [adiamond@diamondmccarthy.com](mailto:adiamond@diamondmccarthy.com)  
Eric D. Madden, TX State Bar No. 24013079  
Email: [emadden@diamondmccarthy.com](mailto:emadden@diamondmccarthy.com)

Special Litigation Counsel for USACM Liquidating Trust

**LEWIS AND ROCA LLP**

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Telephone (702) 949-8320  
Facsimile (702) 949-8321

Susan M. Freeman, AZ State Bar No. 004199  
Email: [sfreeman@lrlaw.com](mailto:sfreeman@lrlaw.com)  
Rob Charles, NV State Bar No. 006593  
Email: [rcharles@lrlaw.com](mailto:rcharles@lrlaw.com)

Counsel for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS,  
LLC,

USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,

USA SECURITIES, LLC, Debtors.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**MOTION FOR ORDER REQUIRING  
KEN ROSE TO APPEAR FOR  
EXAMINATION PURSUANT TO  
FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 2004**

[No hearing required]

Pursuant to Federal Rule of Bankruptcy Procedure 2004, the USACM Liquidating Trust (the "Trust" or "Movant") hereby moves this Court for an order requiring Ken Rose ("Rose") to appear, as set forth in the subpoena to be issued under Federal Rule of Bankruptcy Procedure 9016, to appear for examination at the office of Merrill

1 Corporation, British Pacific Center, 8899 University Center Lane, Suite 200, San Diego,  
 2 California 92122, on a business day no earlier than ten (10) business days after the filing  
 3 of this Motion and no later than April 10, 2008 (or at such other mutually agreeable  
 4 location, date, and time) and continuing from day to day thereafter until completed.  
 5

6 This Motion is further explained in the following Memorandum.

### 7 **Memorandum**

8 The Movant seeks information concerning various transactions and other dealings  
 9 between USACM, the other debtors in the above-captioned cases (together with USACM,  
 10 the “Debtors”), and the Debtors’ affiliates, subsidiaries, parents, or otherwise related  
 11 entities. The Movant seeks this information to assist in the collection of the assets and the  
 12 investigation of the liabilities of the Debtors.  
 13  
 14

15 The requested discovery from Rose is well within the scope of examination  
 16 permitted under Bankruptcy Rule 2004, which includes:

17 [t]he acts, conduct, or property or . . . the liabilities and financial condition  
 18 of the debtor, or . . . any matter which may affect the administration of the  
 19 debtor’s estate, or to the debtor’s right to a discharge. In a . . .  
 20 reorganization case under chapter 11 of the Code, . . . the examination may  
 21 also relate to the operation of any business and the desirability of its  
 22 continuance, the source of any money or property acquired or to be acquired  
 23 by the debtor for purposes of consummating a plan and the consideration  
 24 given or offered therefore, and any other matter relevant to the case or to the  
 25 formulation of a plan.<sup>1</sup>  
 26

### 23 **Conclusion**

24 Accordingly, the Movant requests that this Court enter the form of order submitted  
 25 with this Motion.  
 26

---

<sup>1</sup> FED.R. BANKR. P. 2004(b).

1 Dated: March 11, 2008.

2 **DIAMOND MCCARTHY LLP**

3 **LEWIS AND ROCA LLP**

4 By: /s/ Eric D. Madden  
5 Allan B. Diamond, TX 05801800 (pro hac vice)  
6 William T. Reid, IV, TX 00788817 (pro hac vice)  
7 Eric D. Madden, TX 24013079 (pro hac vice)  
8 909 Fannin, Suite 1500  
9 Houston, Texas 77010  
(713) 333-5100 (telephone)  
(713) 333-5199 (facsimile)

By: /s/ Rob Charles  
Susan M. Freeman, AZ 4199 (pro hac vice)  
Rob Charles, NV 6593  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169-5996  
(702) 949-8320(telephone)  
(702) 949-8321(facsimile)

10 *Special Litigation Counsel for*  
11 *USACM Liquidating Trust*

*Counsel for USACM Liquidating Trust*